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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,601	02/06/2004	Monto H. Kumagai	60-002234US	8475

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EXAMINER

MCKELVEY, TERRY ALAN

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

46 10/773,601



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

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305

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Commissioner for Patents

The amendment filed on 1/3/05 canceling all claims drawn to the elected invention (which is the originally presented invention) and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because newly submitted claims 2-15 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The claims belong to the following inventions:

I. Claim 1, drawn to vector, classified in class 435, subclass 320.1.

II. Claims 2-15, drawn to method of producing a plant cell and a plant cell, classified in class 435, subclasses 468 and 419.

The inventions of Group I and Group II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the product of Group I is not used in or made by the method of Group II. The vector of Group I comprises a polynucleotide encoding a viral coat protein derived from a tomato mosaic virus and the vector is derived from a tobacco mosaic virus. This is different from the vector used in the method of Group II which lacks those limitations, but which instead has the limitation of wherein the target gene inhibitory RNA is specific for a target gene comprising a negative regulator of the gene-product of interest, which is not present in the vector of Group I. Therefore, the modes of operation, functions, and effects of the two different vectors (and thus different groups) are different from each other.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and the non-patent literature search required for each group is different for each because different vectors having different elements are in each group, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, claim 1, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, the amendment filed on 1/3/05 canceling all claims drawn to the elected invention (which is the originally presented invention) and presenting only claims drawn to a non-elected invention is non-responsive.

Additionally, the amendment filed 1/3/05 is considered non-responsive because it has failed to meet the requirements of 37 CFR 1.121 because a complete listing of all claims is not present (claims 2-14 were present earlier in the prosecution, but were subsequently canceled). Also, new claims 2-15 were added, but improperly use some claim numbers drawn to different canceled claims.

- Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE. Certain papers related to this application may be submitted to Art Unit 1636 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). The official fax telephone number for the Group is 571-273-8300. NOTE: If Applicant does submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Any inquiry concerning rejections or objections in this communication or earlier communications from the examiner should be directed to Terry A. McKelvey whose telephone number is (571) 272-0775. The examiner can normally be reached on Monday through Friday, except for Wednesdays, from about 7:30 AM to about 6:00 PM. A phone message left at this number will be responded to as soon as possible (i.e., shortly after the examiner returns to his office).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Remy Yucel can be reached at (571) 272-0781.


TERRY MCKELVEY
PRIMARY EXAMINER